



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

7/8/2021 10:14:08 AM

Office of West Virginia  
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-  
MAKING REVIEW COMMITTEE**

AGENCY: Tax TITLE-SERIES: 110-16A  
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No  
RULE NAME: 110-16A On-Line Bingo and Raffles

**PRIMARY CONTACT**

NAME: MARK S MORTON  
ADDRESS: PO Box 1005  
Charleston, WV 25324  
EMAIL: taxlegal@wv.gov  
PHONE NUMBER: 304-558-5330

CITE STATUTORY AUTHORITY: W. Va. Code § 29A-1-1, et seq

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The proposed new rule is required by the provisions of W. Va. Code §11-15A-8(b), and allowed pursuant to the provisions of W. Va. Code §11-10-5. The rule explains its genesis; provides definitions; sets forth requirements for absorbing or assuming the sales and use tax; provides guidance regarding who the taxpayer is and who receives any refund if the retailer absorbs or assumes the sales and use tax; and provides guidance regarding how the assumption or absorption is applied with regard to municipal sales and use taxes, motor vehicle sales, the motor fuel tax, and the special district excise tax.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/3/2021

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/7/2021

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

POSTED ON WV STATE TAX DEPARTMENT WEBSITE

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The proposed rule provides guidance for the conduct of charitable raffles and bingo when conducted on-line. The Rule clarifies that all prior existing statutes and rules governing charitable gaming apply equally to such online games.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Senate Bill 263 amended the definitions of bingo and raffles to include on-line games conducted via the internet. While the bill did not require promulgation of a rule, a rule was deemed necessary to provide guidance to charities wishing to conduct on-line games for fundraising purposes.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This legislative rule provides guidance for the conduct of charitable bingo and charitable raffles online within the existing laws and legislative rules for charitable gaming. This legislative rule expands upon existing WV Code in relation to Bingo and Raffles by providing for the allowance of online bingo and raffles. This rule also contains a provision requiring the use of geolocation services so as to reasonably determine the patron is within the boundaries of the state of WV. This rule contains a sunset provision which provides the rule shall terminate and have no further force or effect on or after August 1, 2027. The stated purpose of this legislative rule would appear to allow charitable organizations the opportunity to raise additional funds. This rule would have no effect on state revenues. The Tax Department would incur administrative costs as a result of this legislative rule in the amount of \$20,000 in FY 2022.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

This legislative rule provides guidance for the conduct of charitable bingo and charitable raffles online within the existing laws and legislative rules for charitable gaming. This legislative rule expands upon existing WV Code in relation to Bingo and Raffles by providing for the allowance of online bingo and raffles. This rule also contains a provision requiring the use of geolocation services so as to reasonably determine the patron is within the boundaries of the state of WV. This rule contains a sunset provision which provides the rule shall terminate and have no further force or effect on or after August 1, 2027. The stated purpose of this legislative rule would appear to allow charitable organizations the opportunity to raise additional funds. This rule would have no effect on state revenues. The Tax Department would incur administrative costs as a result of this legislative rule in the amount of \$20,000 in FY 2022.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

This legislative rule provides guidance for the conduct of charitable bingo and charitable raffles online within the existing laws and legislative rules for charitable gaming. This legislative rule expands upon existing WV Code in relation to Bingo and Raffles by providing for the allowance of online bingo and raffles. This rule also contains a provision requiring the use of geolocation services so as to reasonably determine the patron is within the boundaries of the state of WV. This rule contains a sunset provision which provides the rule shall terminate and have no further force or effect on or after August 1, 2027. The stated purpose of this legislative rule would appear to allow charitable organizations the opportunity to raise additional funds. This rule would have no effect on state revenues. The Tax Department would incur administrative costs as a result of this legislative rule in the amount of \$20,000 in FY 2022.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	20,000.00	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	20,000.00	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

This legislative rule provides guidance for the conduct of charitable bingo and charitable raffles online within the existing laws and legislative rules for charitable gaming. This legislative rule expands upon existing WV Code in relation to Bingo and Raffles by providing for the allowance of online bingo and raffles. This rule also contains a provision requiring the use of geolocation services so as to

reasonably determine the patron is within the boundaries of the state of WV. This rule contains a sunset provision which provides the rule shall terminate and have no further force or effect on or after August 1, 2027. The stated purpose of this legislative rule would appear to allow charitable organizations the opportunity to raise additional funds. This rule would have no effect on state revenues. The Tax Department would incur administrative costs as a result of this legislative rule in the amount of \$20,000 in FY 2022.

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

**Yes**

**Allen R Prunty -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

110CSR16A

TITLE 110  
LEGISLATIVE RULE  
STATE TAX DEPARTMENT

SERIES 16A  
ON-LINE BINGO AND RAFFLES

**§110-16A-1. General.**

1.1. Scope. -- This rule provides guidance for the conduct of charitable bingo and charitable raffles online within the existing laws and legislative rules for charitable gaming.

1.2. Authority. -- W. Va. Code § 29A-1-1, et seq.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on and after August 1, 2027.

**110-16A-2. Definitions.**

2.1. "Bingo" means the game wherein participants pay consideration for the use of one or more paper or virtual cards bearing several rows of numbers in which no two cards played in any one game contain the same sequence or pattern. When the game commences, numbers are selected by chance, one by one, and announced. The players cover or mark those numbers announced as they appear on the card or cards which they are using. The player who first announces that he or she has covered a predetermined sequence or pattern which had been preannounced for that game is, upon verification that he or she has covered the predetermined sequence or pattern, declared the winner of that game. Bingo, as authorized by W. Va. Code §47-20-1, et seq., may be operated and played virtually over the Internet using an online bingo software system or web application.

2.2. "Bingo occasion" or "occasion" means a single gathering or session at which a series of one or more successive bingo games is conducted by a single licensee.

2.3. "On-line bingo" means the game of bingo, as defined by this rule and W. Va. Code §47-20-2, when the game is conducted to allow remote play by patrons through the Internet using electronically simulated "virtual" bingo cards.

2.4. "Raffle" means a game involving the selling or distribution of paper or virtual tickets, entitling the holder or holders to participate in a raffle game for a chance on a prize or prizes: Provided, That any mechanical or electronic raffle ticket system of whatever design or function is prohibited except as provided in paragraph (2) of this subdivision. This subdivision shall not be interpreted to prevent the use of:

(1) Hand-cranked or motorized drum mixers which randomly mix tickets or other indicia together for the purpose of allowing the hand drawing of a ticket or winning indicia;

(2) Mechanical or electronic ticket dispenser systems that produce paper tickets with randomly generated indicia that cannot be redeemed electronically, cannot be used for any other purpose than a one-time raffle, and are limited as follows:

(A) No more than three electronic ticket dispensing units in facilities with a capacity of fewer than 3,000 people; or

(B) No more than one electronic ticket dispensing unit for every 1,000 persons permitted in facilities with a maximum occupancy greater than 3,000 people, not to exceed a total of 10 dispensing units;

(3) A cash register for handling proceeds of sales and other ordinary cash-handling and record-keeping functions of a raffle licensee;

(4) Accounting and record-keeping software for the purpose of maintaining accounting and reporting records of the licensee, and the computer for running those applications; or

(5) An online raffle software system, web application, method, or process for the purpose of conducting online raffles over the Internet.

2.5. "Raffle occasion" or "occasion" means a single gathering or session at which a series of one or more successive raffles is conducted by a single licensee.

2.6. "On-line raffle" means a raffle, as defined by this rule and W. Va. Code §47-21-2 when the game is conducted to allow remote play by patrons by means of an online raffle software system, web application, method, or process for the purpose of conducting online raffles over the Internet, using electronically simulated "virtual" tickets.

2.7. "Licensee" means a tax-exempt not-for-profit charitable or public service organization holding a current valid bingo or raffle license issued by the State Tax Commissioner under the provisions of W. Va. Code §47-20-4 or W. Va. Code §47-21-4.

2.8. "Provider" or "on-line service provider" means the facilitator of an on-line platform for the conduct of on-line bingo or raffles over the Internet, including providers of an on-line bingo or raffle system, web application, method or process for the purpose of conducting on-line bingo or raffle occasions on the Internet. For purposes of this Rule, providers of on-line services for the conduct of charitable raffles shall be considered wholesalers or distributors of charitable raffle boards and games, as defined by W. Va. Code §47-23-2.

2.9. "Commissioner" means the tax commissioner of the state of West Virginia or his or her delegate.

### **§110-16A-3. Licensed on-line bingo and raffles.**

3.1. On-line bingo may be conducted by any organization licensed to conduct bingo under the provisions of W. Va. Code §47-20-1, et seq., and all laws and legislative rules relating to the conduct of bingo shall apply equally to the conduct of such on-line games.

3.2. On-line raffles may be conducted by any organization licensed to conduct raffles under the provisions of W. Va. Code §47-21-1, et seq., and all laws and legislative rules relating to the conduct of raffles shall apply equally to the conduct of such on-line games.

3.3. Pursuant to the authority granted to the Commissioner under W. Va. Code §47-23-2 (e), electronic raffles or on-line raffles, as defined by this Rule, shall be considered "charitable raffle games" subject to the provisions of the Charitable Raffle Boards and Games Act [W. Va. Code §47-23-1, et seq.]

3.4. On-line service providers, as defined by this Rule, shall register with the State Tax Division under the provisions of W. Va. Code §11-12-1, et. seq.

3.5. Providers of any supplies or equipment for the conduct of electronic raffles, or providers of on-line services to facilitate the conduct of on-line raffles shall register as wholesalers or distributors of charitable raffle boards and games under the provisions of W. Va. Code §47-23-3. Fees imposed by that section shall be based on the gross charges to the licensee for the provision of such services.

**§110-16A-4. Geolocation requirement.**

4.1. In order to prevent unauthorized use of an on-line gaming system when a patron is not within the boundaries of the State of West Virginia, any licensee conducting an on-line bingo or on-line raffle occasion must utilize a geolocation system to reasonably detect the physical location of a patron attempting to access the on-line game and to monitor and block unauthorized attempts to access the game when the patron is not within the boundaries of the State of West Virginia.

4.2. The geolocation system shall ensure that any patron is located within the boundaries of the State of West Virginia when participating in an on-line bingo or raffle occasion and shall be equipped to dynamically monitor the patron's location and block unauthorized attempts to access the games throughout the duration of the bingo or raffle occasion.

4.3. The Commissioner shall approve technical specifications for geolocation systems and any specific requirements related to geolocation.

**§110-16A-5. Age restriction on bingo.**

5.1. No licensee shall permit or allow any individual under the age of eighteen to participate in the playing of any bingo game.

5.2. Any licensee conducting on-line bingo games shall establish and maintain a positive age-verification system to ensure that no individual under the age of eighteen may participate in the playing of any bingo game.

**§110-16A-6. Sales of bingo cards and raffle tickets.**

6.1. Payment for participation in an on-line bingo game or raffle must be made directly to the licensee. Third-party payors may not be used.

6.2. Payment may be made through a pre-payment account established with the licensee, by debit card, or an electronic funds transfer.

6.3. A licensee may receive and cash personal checks in an amount not to exceed one hundred dollars during the normal operation of a bingo game.

6.4. In no case may a licensee accept payment by credit card, and licensees may not extend credit in any form to any patron of a bingo game or raffle, either in-person or on-line.

**§110-16A-7. Frequency and duration of bingo occasions.**

7.1. A holder of an annual bingo license may hold no more than two bingo occasions per week, whether such games are conducted in-person or on-line.

7.2. No bingo occasion or on-line bingo occasion held pursuant to an annual bingo license may exceed six hours' duration.

**§110-16A-8. Restrictions on use of equipment; expenses for the conduct of on-line games.**

8.1. A licensee may use only bingo equipment or raffle equipment, including software or programming for conducting bingo or raffles on-line over the Internet, which the licensee owns or which it borrows without compensation, or leases for a reasonable and customary amount from another licensee.

8.2. Fees paid to a provider for access to an Internet platform for the conduct of on-line bingo or on-line raffles shall be limited to a reasonable fixed rate, and in no case may a licensee enter into a revenue-sharing agreement with an on-line service provider whereby access fees are based on a percentage of the licensee's gross or net revenues or the volume of patrons for any on-line bingo occasion or raffle.

**§110-16A-9. Limits on prizes awarded.**

9.1. The average total prizes awarded by a licensee for any bingo occasion held pursuant to an annual or limited occasion license may not exceed ten thousand dollars in value, whether in cash or merchandise.

9.2. Bingo or raffle prizes may be money or merchandise other than beer, nonintoxicating beer, wine, spirits or alcoholic liquor. The value assigned to merchandise prizes is their fair market value at the time of purchase.

**§110-16A-10. Violations.**

10.1. Violations of the provisions of this rule shall be subject to the penalties set forth in W. Va. Code §47-20-1 et seq., W. Va. Code §47-1-1 et seq., or W. Va. Code §47-23-1 et seq., as applicable.